

CUSTLAW – FINAL COACHING

CMTA – RA 10863 – RKC – IHSC (Harmonization and Simplification of Customs Procedures)

NEW PROVISIONS (NOT IN TCCP):

NOT OBVIOUS

1. Relief Consignment – Calamity victims – Duty and Tax Free
2. Declarant Provision – weakened CB profession
3. De-Minimis Value – from P10 in TCCP to P10,000 in CMTA (FCA Value)
4. Balikbayan Box – Php 150k FCA value (3 times can be availed in 1 year BUT 150k per year only)
5. Technical Smuggling can now be Imprisoned – Sec 1401
6. Automatic review by SOF for Php 10 million FCA/FOB in forfeiture cases (five million in TCCP)
7. Legal Interest 20% per annum for Demand letters of LBD and PCAG

PREV QUESTIONS by PRC

8. Advance Ruling of BOC – ROO and Valuation (90days applied before importation) [WTO Trade Facilitation Agreement]
9. Authorized Economic Operator – AEO under WCO SAFE Framework
10. Provisional Goods Declaration
11. Electronic Records – Use of ICT now incorporated in Provisions instead of CAOs

DECLARANT PROVISION – SEC 106 CMTA

1. Importer of Record / Exporter
2. Customs Broker
3. Agent/Atty in Fact (NOT DELETED from TCCP; but ineffective no IRR)

EFFECT OF DECLARANT – Liability to declaration and may be imprisoned

REMIGIO vs SANDIGANBAYAN – CB Remigio used defense on NOT KNOWING ACTUAL CONTENTS of the shipment but basing on DOCUMENTS PROVIDED by IMPORTER (NOT A CASE PRECEDENT ANYMORE DUE TO DECLARANT PROVISION AND SEC 1401)

IMPORTATION BEGINS (BOC ACQUIRES JURISDICTION)

1. Vessel/Aircraft ENTERS PH Territory; AND
 2. Intention to unlade therein.
- EXCEPTION:
- a. ILLUH ASAALI CASE – PH Registered vessel, can be caught anywhere in the world – RATIONALE: PH Registered vessel is an extension of the PH
 - b. DOCTRINE OF HOT PURSUIT – started inside the PH in pursuing smuggler, EXTENDS in HIGH

SEAS/INT’L WATERS [if went into another country, will need RED NOTICE]

IMPORTATION ENDS (BOC ENDS JURISDICTION)

1. Payment / Secured to be paid; AND
2. LEGALLY left the jurisdiction (usually by permit to release goods)

CUSTOMS JURISDICTION SEC 300 – PLACES WHERE CUSTOMS EXERCISE AUTHORITY

CUSTOMS CONTROL – SEC 301 – INCLUDES PROCESSES, ICT

POLICE POWERS

PERSONS EXERCISING POLICE AUTHORITY

1. BOC Officials and Customs Police
2. Deputization Order by OCOM to AFP and PNP
3. BIR Officials and employees when payment of Internal Revenue is involved.

MISSION ORDER – For employees of BOC only to effectively act on mission [Valid for not more than 30 days from issuance]

DEPUTIZATION ORDER – For non-BOC employees to vest power of CMTA unto them

PAPA VS MAGO CASE – BOC acquired jurisdiction post-importation (Truck on the way to importer’s warehouse) AND MANILA-PNP was deputized by OCOM to seize goods without arrest warrant.

PLACE TO EXERCISE

1. Dwelling House – Requirement of Search warrant

RULE: No need search warrant in Customs even when Security Guard or Manager/Employee of warehouse is residing within the warehouse.

2. Anywhere outside BOC premises (Importer’s premises/warehouses)

Letter of Authority – document empowering BOC of Visitorial and inspection AND identification of customs officers authorized to demand evidence of payment. [duration: same with the mission]

PROPERTY SUBJECT TO SEIZURE AND FORFEITURE

RULE: All goods and conveyance violating CMTA shall be seized for forfeiture case under CMTA

EXCEPTIONS:

1. VESSELS – Common Carrier Vessels (e.g. Maersk) conveying smuggled goods may not be seized

RATIONALE: They do not know that their passenger/cargo is involved in smuggling activities.

2. No Prima Facie (AT FIRST GLANCE) Evidence or No Knowledge of smuggling

WARRANTS UNDER CMTA

1. Warrant of Seizure and Detention (WSD) – Issued by Dist. Collector on seized goods and to prosper Admin Proceedings (Forfeiture Case)
2. Warrant of Compulsary Acquisition (WCA) – Issued by OCOM to buy out a goods with grossly undervalued (declared FOB value) in their declaration
 - a. Duty Benchmarking – practice of paying uniform duty on categories of goods disregarding the quality, quantity and actual value of goods.
 - b. CAO 16-2019 defined Grossly Undervalued at least 30% in Declared Value vs other Reference.

ADMIN AND JUDICIAL PROCEEDINGS

Doctrine of Exhaustion of Administrative Remedies – Start your case in BOC first (Dist. Collector then Comm.) before going to Judicial Courts (CTA and Supreme Court)

2 CASES ARISING FROM CMTA

1. Protest Case – Valuation/Classification and/or ROO, or a mix of any of the above. IMPORTER INITIATES (15 days from final payment)
2. Forfeiture Case – Illegality of the shipment – BOC INITIATES – THRU WSD

ADMIN PROCEEDINGS PREFACE – Question of FACT

15/30 RULE

- a. 15 days for Importer to file an appeal to the Govt.

EXCEPT: Warrant of Compulsary Acquisition: Importer to file an appeal within 20 Working Days (Sec. 709)

- b. 30 days for Government to render a decision

REQUIREMENTS IN APPEAL (ATTY. ANDAYA)

1. Written Notice of Appeal to DIST. COLL.
2. Memorandum of Appeal to OCOM
3. Appeal Fee

ADVERSE TO THE GOV'T in BOC DECISIONS - 2 LEVELS

GENERAL RULE: OCOM to automatically review Dist. Collector decision (Government cannot lose, BOC needs to lose 2x in a case - first in DC, second in OCOM)

AUTOMATIC REVIEW BY SOF:

1. DC lost and OCOM has no decision – automatically elevated to SOF
2. Php 10 million FCA/FOB value – Automatically reviewed by SOF

NOTE: Importer cannot appeal to SOF. Adverse decision to importer shall be appealed to CTA after OCOM.

ADMIN proceeding transforms into JUDICIAL proceeding once importer appeals to CTA.

JUDICIAL PROCEEDINGS

ENRILE VS VINUYA CASE

1. Seizure of Cadillac (CAR) due to unpaid duties and taxes, Vinuya complained to Court of First Instance of Rizal to regain possession –INCORRECT application of the law
2. Exclusive Original Jurisdiction of BOC on Seizure and Forfeiture Cases – you cannot go to Court of First Instance or RTC to start your case.

SENERES VS FRIAS CASE

1. Seizure of jackpot machine and slot machine as prohibited imports
2. Court of Iloilo issued a writ of preliminary injunction but was ruled by Supreme Court that Court of Iloilo lacked jurisdiction due to BOC exclusive jurisdiction over imported goods.
3. Court of Tax Appeals (CTA) *then Court of Appeals (CA)* having power of Exclusive Original Appellate (1st appeal) Jurisdiction over Imported goods.

CTA AND SUPREME COURT

PREFACE: Questions of LAW in JUDICIAL Proceedings

1. CTA RA 1125 – Act creating CTA (1954) as amended by RA 9282 (2004) and RA 9503 (2008)
2. Court Of Tax Appeals – First mode of appeal after Admin Proceedings
 - a. Follows the same procedure period to appeal (15 days from decision of either OCOM/SOF)
 - i. CTA en banc has 1 Presiding Justice and 8 Assoc. Justices
 - ii. CTA has 3 Divisions – each Div has 3 justices
 - b. CTA Division as Original Case then CTA En Banc as appellate case
 - c. CTA en banc – appeal from CTA division by way of :
 - i. Motion to Reconsider (MR) or

- ii. Motion of New Trial (MNT)
- 3. Supreme Court (SC)
 - a. Can only appeal after CTA
 - b. Same Procedure with CTA – File appeal to SC Division first, then if adverse to importer, can file to SC En banc

FRAUD INVESTIGATION AND PROSECUTION

ABSOLUTE RULE: No criminal case for violation of CMTA shall be filed without the approval of OCOM (Loophole for friends of OCOM) [Sec. 1138,CMTA]

RA 9280 CUSTOMS BROKERS ACT of 2004

RA 9853 – AMENDMENT OF RA 9280

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| 1. | Amended Section 6 – Scope of Practice of CB Profession - Enumerated the practices such as |
| | <ul style="list-style-type: none"> a. consultation, b. preparation of docs, c. declaration, d. signing/filing, e. representing/representation; f. Render professional service. |
| | <ul style="list-style-type: none"> i. Academe CBs are also considered Practicing CB in the paragraph below the enumeration. |
| 2. | Section 27 amended – Acts constituting Practice of CB Profession for EXPORT DECLARATION which is either Exporter OR Customs Broker (compared to the original RA 9280 as mandatory both exporter and CB) |
| 3. | Sec 29 – Admission to Professional Practice – Minimum paid up capital of PHP 1 M before accredited by BOC |

SALIENT PROVISIONS OF RA 9280

PRBCB – 3 person board (1 Chair and 2 members)

- Nominated by CCBI or AIPO (5 person per position)
 - Recommended by PRC (3 person per position)
 - Appointed by Pres. Of the Phils
1. PRC as Administrator of the Board Exam; and
 2. PRBCB who drafts the board exam questions AND regulates the professionals (thru DA or Disciplinary Action)

SECTION 21 – REVOCATION OR SUSPENSION OF COR/PIC

Revocation - recall a power or authority previously given

Suspension – temporary

75/60 RULE

- Average of 75% in all subjects

- No below 60% in any subject

RELEASE OF RESULTS OF EXAMINATION – Within 10 days

SUCCESSFUL BOARD EXAMINEES

1. Certificate of Registration (Diploma); and
2. Professional Identification Card (PVC License)

COE COETS

- COE – Code of Ethics
- COETS – Code of Ethics and Technical Standards
- PRBCB Resolution No. 5 of 2015

Primary Tenets of CB— Competence Respect Integrity Justice and Fairness (CRIJF)

Sec. 6.3 of Article 3 COETS – Not allow himself as dummy of another entity which would permit any person not registered as CB to practice the profession.